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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,926	04/12/2001	Yushi Niwa	072982/0219	5238

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FOLEY AND LARDNER LLP
SUITE 500
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WASHINGTON, DC 20007

EXAMINER

CASLER, TRACI

ART UNIT	PAPER NUMBER
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3629

MAIL DATE	DELIVERY MODE
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05/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/832,926

Applicant(s)

NIWA, YUSHI

Examiner

Traci L. Casler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, -8, 10-18, 20-27 and 29-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-8, 10-18, 20-27 and 29-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to papers filed on February 2, 2007.

Claims 1, 3 and 20 are amended.

Claims 1, 3-8, 10-18, 20-27 and 29-41 are pending.

Claims 1, 3-8, 10-18, 20-27 and 29-41 are rejected.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 8, 10-17, 21, 27, 29-36 and 39-41 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

3. As to claims 8, 10-17, 21, 27, 29-36 and 39-41 the claims are directed towards a calculation of a tolerance. The calculation uses the claims factors of claims 39-41 in order to determine the tolerance. However, applicant fails to disclose of one of ordinary skill in the art would determine what the factor is for a specified day. Applicant discloses a factor table, however fails to teach how one knows what factor a day is given. What is the basis for determine a dates factor, is it a calculation? If it is historical data how does one know how to use this historical data, what importance does different

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historical data have in reference to other data for a particular day? Applicant fails to disclose elements which are instrumental to determining the factor for each given date, therefore, one of ordinary skill in the art at the time of invention would not be able to make and/or use on without undue experimentation.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 8, 10-17, 21, 27, 29-36 and 39-41 are rejected under 35 U.S.C. 101 because the invention fails to set forth a concrete, tangible result.

6. As to claims 8, 10-17, 21, 27, 29-36 and 39-41 applicant is claiming "factors" used in a tolerance calculation. However, these calculations fail to create a concrete tangible result that is repeatable due to the fact that the factors used in the calculations are subjective. The factors appear to be a random number generated by a user of the system. The factors are randomly assigned based on prediction using historical data. However, these factors may not be determined to be the same depending on who is setting the factors. There are no specific steps set forth identifying criteria that is to be used and/or followed when making a factor determination.

7. Therefore the subjective component(factors) of the invention are not of a reproducible result.

Response to Arguments

8. Applicant's arguments filed February 2, 2007 have been fully considered but they are not persuasive.

9. The examiner notes that applicants arguments to rejections are lumped in to one large argument rather than addressed separately based on the individual rejections. The examiner will best address the arguments and the examiners understanding of which rejection is being argued.

10. As to applicants arguments regarding the determination of a factor to be used in a tolerance calculation. The applicant argues that the factors are "historical data" used to predict traffic flow for the respective dates. The applicant uses the examples of a redskins or wizards game that take place on a "Specific date". The way it is understood by the arguments the factors are determined on historical data of redskins game effecting traffic on that specific date. However, the specific date may not be on that same date in the future.

11. The applicant additionally makes the arguments that there can be more than one way to "compute" a factor(pg. 18 last paragraph of response dated 02/02/2007) and that one of ordinary skill in the art would know what is needed to make and use the invention and how the use of factors affects tolerances. The examiner notes that the factors effects on a tolerance are what is in questions. The examiner is questioning how one of skill in the art would know how to get the factor as claimed by the current claims. IF there are several ways to compute the factors how does one know which computation

to use in order to get the claimed factor. Further more the applicant argues that one all the "criteria" are known to the user they will be able to compute the factor.

12. The examiner first notes that applicants arguments do not seem to agree with each other. Applicant has pointed to two locations in the disclosure in which the factor is used in two different manners. The applicants pointed to Pg. 24 l. 25-30 in which the "factor value" is to be added to the value of the tolerance; on Pg. 30 l. 1-5 states that the "factor value" is to be multiplied to the tolerance value. These sections give conflicting teachings of how one is to use a factors in the first place, one would get completely different outcomes if one multiplied vs. added values.

13. As to applicants arguments that the rejections of claims being "non-statutory" is wrong the arguments are not persuasive. The applicant argues that the computation criteria are provided for computing factors and gives examples. (Pg. 19 2nd paragraph of response 02/02/2007). However, the applicant fails to point to a section of the disclosure in which this computation criteria is disclosed. Additionally the applicant continues to state that two user assign two completely different factors to the same event based on the users knowledge of the event. This would not lead to repeatable result. The two users factor values would then effect the tolerance value and have completely different tolerance values which in turn effects the rest of the travel information.

14. Furthermore, the applicant is arguing the user will adjust the factors, but the factor table is maintained by the distribution center and not the user. Therefore, the users would not be setting the "factor" that is revised or updated.

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15. The examiner notes that Pg. 34 of the disclosure specifically discussed the factor table with specific dates that are looked at the my distribution center(in date format) for determining which factors will affect the users travel. The examiner again notes that if it is date specific a redskins or wizards came on March 1, 2006 will not give appropriate factors for travel on March 1, 2007. Just because a game took place on that date the previous year does not mean a game will be on the exact same date. Therefore, the results will be inaccurate. The user would need the system to be a "guide" for whether they have time to eat before their train leaves if a game was taking place but would the system could result in inaccurate results which are not even appropriately "Guiding" the user on their schedule.

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

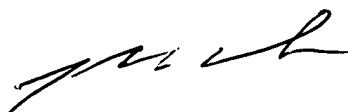
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traci L. Casler whose telephone number is 571-272-6809. The examiner can normally be reached on Monday-Thursday 6:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TLC



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